

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

<b>VICTOR S. MARTINI,</b>	)	
	)	
<b>Plaintiff,</b>	)	
	)	<b>No. 04-354E</b>
<b>vs.</b>	)	
	)	<b>Hon. Maurice B. Cohill, Jr.</b>
<b>PRESQUE ISLE CAPITAL MANAGEMENT,</b>	)	<b>Magistrate Judge Susan</b>
<b>INC. and JAMES H. THOMAS,</b>	)	<b>Paradise Baxter</b>
	)	
<b>Defendants.</b>	)	

**DEFENDANTS' MOTION FOR RECONSIDERATION**

NOW COMES Defendants, through undersigned counsel, respectfully requesting that the Court reconsider its Order (Doc. 31) denying their objection to part of Magistrate Judge Susan Paradise Baxter's Report and Recommendations dated February 6, 2006 (the "Report") (Doc. 28).

Defendants timely objected to the Report on the grounds that it failed to address one argument in favor of dismissal, namely, Plaintiff's failure to plead the requisite elements of Count V. (Doc. 29). In denying Defendants' Objections, the Court found Defendants to be "mistaken" in that the Court was referred to a "Certificate of Service page", which obviously offered no support for the objection. Unfortunately, Defendants Objection contained a typographical error. Defendants referred the Court to "Document # 25, at p. 4" when they meant to refer the Court to "Document 27, at p. 4."

Had a typographical error not occurred, the Court would have seen that Defendants requested dismissal for failure to plead the elements, yet that argument was not addressed in the Report. For this reason, Defendants respectfully request that the Court reconsider its Order denying Defendants' Objection.

Dated: March 9, 2006

Respectfully submitted,

**Presque Isle Capital Management, Inc.  
and James H. Thomas**

By: /s/ Robert L. Herskovits

Robert L. Herskovits, Esq.  
BACHNER & HERSKOVITS, P.C.  
Attorney for Defendants\*  
26 Broadway, Suite 2310  
New York, NY 10004  
(212) 344-7778  
(212) 344-7774 – fax  
rh@ bhlawfirm.com – email

\*Subject to *pro hac vice*  
admission

**CERTIFICATE OF SERVICE**

I hereby certify that on March 9, 2006, I electronically filed the foregoing with the Clerk of the Court for the U.S. District Court for the Western District of Pennsylvania, by using the CM/ECF system which will send a notice of electronic filing to the following CM/ECF participant:

Arnold Y. Steinberg, Esq.  
Arnold Y. Steinberg, P.C.  
1420 Center Avenue  
Suite 1504  
Pittsburgh, PA 15219

By: /s/ Robert L. Herskovits

Robert L. Herskovits, Esq.  
BACHNER & HERSKOVITS, P.C.  
26 Broadway, Suite 2310  
New York, NY 10004  
(212) 344-7778  
(212) 344-7774 – fax